

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

NEW NGC, INC.,)	
d/b/a NATIONAL GYPSUM COMPANY,)	
)	
Charged Party/Employer,)	
)	
and)	Case 25-CA-031825
)	Case 25-CA-031898
UNITED STEEL, PAPER AND FORESTRY,)	Case 25-CA-065321
RUBBER, MANUFACTURING, ENERGY,)	
ALLIED INDUSTRIAL AND SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO and its)	
LOCAL NO. 7-0354,)	
)	
Charging Parties/Union.)	

UNION’S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S DECISION

Charging Parties United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (“International Union”) and Local No. 7-0354 (“Local Union”) (collectively, “Union”), by counsel, pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), except to certain erroneous specific factual findings and conclusions of the Administrative Law Judge’s (“ALJ”) Decision. This matter was transferred to the Board pursuant to Section 102.45 of the Board’s Rules and Regulations by September 7, 2012 Order of the Executive Secretary by the direction of the Board.

A. Basis For Review

The ALJ made the following erroneous specific factual findings and conclusions to which the Union excepts:

1. The ALJ's finding that there is not a preponderance of the record evidence which supports, in substantial part, the General Counsel's allegations that: 1) the Company unlawfully refused to continue bargaining with the Union by prematurely declaring impasse and improperly conditioning an end to the impasse on the Union submitting its "last, best, final offer" to another vote; and 2) the Company unlawfully locked out all 80-82 unit employees in support of its unlawful bargaining position. (ALJ's Decision, p. 2, Lines 13-21, 25-29; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-36, 37-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 99-101, 103-105; G.C. Ex. 10, p. 5-6; Respondent's Exhibits 19, 24, 44, 113, 132).

2. The ALJ's finding that New NGC, Inc., d/b/a National Gypsum Company ("Company") had "the better argument" with respect to whether the Company prematurely declared impasse. (ALJ's Decision, p. 26, Lines 15-31; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548 G.C. Ex. 5, p. 1-5, 7-8, 35-36, 37-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 99-101, 103-105; G.C. Ex. 10, p. 5-6; G.C. Ex. 2(A) p. 17-18).

3. The ALJ's rejection of the General Counsel's argument that the parties had not reached impasse when the Company unilaterally declared impasse during the September 2nd bargaining session given the significant movement that occurred

throughout negotiations, including at the final bargaining sessions, and International Union Representative and lead negotiator Bolte's repeated statements that the Union was prepared to continue bargaining. (ALJ's Decision, p. 26, Lines 15-22, 31; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548 G.C. Ex. 5, p. 1-5, 7-8, 35-36, 37-43, 45-46, 49-60, 61-81, 83-85, 87, 89, 91, 93, 95-97; G.C. Ex. 10, p. 5-6; G.C. Ex. 2(A) p. 17-18; Respondent's Exs. 19, 24, 29, 30, 44, 113, 132).

4. The ALJ's rejection of General Counsel's argument that Company lead negotiator Matt May's statements linking the declared impasse to another ratification demonstrates that the Company had not truly reached the "end of its rope" with respect to bargaining. (ALJ's Decision, p. 26, Lines 15-22, 31; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-36, 37-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 99-101 103-105; G.C. Ex. 10, p. 5-6; G.C. Ex. 2(A) p. 17-18).

5. The ALJ's acceptance of the Company's argument that the parties reached impasse during the September 2nd negotiation session under the relevant legal standards. (ALJ's Decision, p. 26, Lines 24-31; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-

429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-36, 37-43, 45-46, 49-60, 61-81, 83-85, 87, 89, 91, 93, 95-97, 103-105; G.C. Ex. 10, p. 5-6; G.C. Ex. 2(A) p. 17-18).

6. The ALJ's acceptance of the Company's argument that May's statements linking the impasse to a second ratification vote reflected the deadlocked state of negotiations on September 2nd and May's belief that only a re-vote in favor of the Company's last, best, final offer would resolve the deadlock and result in a final agreement. (ALJ's Decision, p. 26, Lines 24-31; Tr. 66-67, 73, 87, 153-156, 260-261, 299-300; Respondent's Exhibit 44).

7. The ALJ's reliance on a previous "history of successfully and expeditiously negotiating successive agreements, apparently without the necessity of economic warfare," when evaluating whether the parties were at impasse. (ALJ's Decision, p. 27, Lines 5-7; Tr. p. 48, 54-56, 59, 73, 79-80, 87, 96, 107-110, 113, 118, 121-125, 345-348, 425, 428-429, 456, 516, 548).

8. The ALJ's reliance on a finding that only seven (7) bargaining meetings took place after February 9, 2011, when the Company initially responded to the Union's economic proposals and formally offered the economic proposals. (ALJ's Decision, p. 27, Lines 9-10, Footnote 29; Tr. p. 43, 48, 51-53, 59-60, 65, 70-71, 73, 77, 87, 95-96, 108-109, 111-114, 125, 132-133, 140, 145, 150-153, 159, 260, 299-300, 464; G.C. Ex. 5, p. 95-97; Respondent's Ex. 24).

9. The ALJ's reliance on a finding that only three full-day bargaining sessions occurred after February 9, 2011 when the Company initially responded to the Union's economic proposals and formally offered the economic proposals. (ALJ's Decision, p. 27, Lines 9-10, Footnote 29; Tr. p. 43, 48, 51-53, 73, 77, 87, 95-96, 109,

111, 113-114, 150-153, 260, 299-300; G.C. Ex. 5, p. 95-97; Respondent's Exhibits 24, 29, 30, 35, 131, 133, p. 27-28).

10. The ALJ's finding that there is no evidence that the Union had anything more to offer on September 2nd that would have altered the Company's steadfast positions on the Company's proposals to substitute a defined contribution pension plan for younger workers and to permit suspending 401(k) matching contributions. (ALJ's Decision, p. 27, Lines 15-21; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-36, 37-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 29, 30, 44, 113, 132).

11. The ALJ's finding that the substantial progress made during the July 28, 2011 and September 2, 2011 bargaining sessions highlight how "ineffectual" such bargaining was and "how little there was left for the Union to move on." (ALJ's Decision, p. 27, Lines 21-25). (ALJ's Decision, p. 27, Lines 21-25; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10).

12. The ALJ's conclusion that the substantial progress made during the July 28th and September 2nd negotiating sessions "highlights how both ineffectual" the Union moves were in resolving the two critical issues and how little there was left for the Union

to move on. (ALJ's Decision, p. 27, Lines 21-25; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 83-85, 87, 89-91, 93, 95-97; G.C. Ex. 10).

13. The ALJ's finding that there was no reasonable basis for the Union to believe that continued bargaining on September 2nd would have been fruitful. (ALJ's Decision, p. 27, Lines 26-27; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 10; Respondent's Exs. 19, 29, 30, 44, 113, 132).

14. The ALJ's conclusion that the Union did not believe that continued bargaining on September 2 would have been fruitful, notwithstanding Bolte's statements on the record that the Union was prepared to continue bargaining. (ALJ's Decision, p. 27, Lines 27-30; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex., Ex. 5, p. 96; G.C. Ex. 10; Respondent's Exs. 44, 113, 132).

15. The ALJ's finding that there was every reason for the Company to believe, as May testified, that Bolte's statements that the Union was prepared to keep bargaining were an "empty offer." (ALJ's Decision, p. 27, Lines 30-31, Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140,

144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; Respondent's Ex. 44).

16. The ALJ's conclusion that the Union's October 24th counterproposal "is irrelevant to whether the Company's actions on September 2 and 6 were unlawful." (ALJ's Decision, p. 28, Lines 6-8; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 103-105).

17. The ALJ's finding that, if considered, the Union's October 24th counterproposal supports the Company's, rather than the General Counsel's, position. (ALJ's Decision, p. 28, Lines 10-12; ALJ's Decision, p. 28, Lines 6-8; Tr. p. 70-72, 76, 159-166, 247, 270; G.C. Ex. 5, p. 103-105).

18. The ALJ's finding that May's statements at the September 2nd negotiation session linking the impasse to a re-vote support rather than undermine a finding of impasse. (ALJ's Decision, p. 28, Lines 14-16; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; Respondent's Ex. 44).

19. The ALJ's finding that: "Nothing is clearer from the record than that no contract could or would be reached with the Union without a favorable ratification vote, and that the Company was well aware of this." (ALJ's Decision, p. 28, Lines 16-17; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300,

335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97; G.C. Ex. 10; Respondent's Ex. 44).

20. The ALJ's crediting of May's testimony in finding that there was a history of employees voting to accept the Company's Last, Best and Final Offer despite the Union's refusal to agree to it at the bargaining table. (ALJ's Decision, p. 29, Lines 9-12; Tr. p. 60, 90-91, 131-132, 153-154, 174, 243, 261, 295-296, 300, 342-353, 390, 393, 450-453, 462; Respondent's Exhibit 44).

21. The ALJ's finding that there was a history of employees voting to accept the Company's Last, Best and Final Offer despite the Union's refusal to agree to it at the bargaining table and that, because this occurred at the Company's Pryor, Oklahoma facility, this explained why the Company continued to push for a second ratification vote and why the Company believed a revote would break the deadlock. (ALJ's Decision, p. 29, Lines 9-21; Tr. p. 60, 90-91, 131-132, 153-154, 157, 174, 243, 261, 295-296, 300, 342-353, 390, 393, 462; Respondent's Ex. 44).

22. The ALJ's finding that "there is no substantial basis in the record to conclude that anything but a favorable ratification vote would have broken the deadlock." (ALJ's Decision, p. 29, Lines 23-24; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 36-43, 546, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97; G.C. Ex. 10; Respondent's Ex. 44).

23. The ALJ's finding that there was no reason to think that the Company would have modified its defined contribution and 401(k) proposals (or the other primary provisions of its Last Best Final Offer ("LBFO")) if the LBFO was voted down again in September. (ALJ's Decision, p. 29, Lines 23-27; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Ex. 44).

24. The ALJ's finding that Company lead negotiator Matt May's statements could not reasonably be construed as suggesting that the Company would agree to modify or withdraw its defined contribution and 401(k) proposals if employees again voted down the Company's LBFO. (ALJ's Decision, p. 29, Lines 32-34; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97).

25. The ALJ's finding that May's statements "were obviously intended to describe, in a simple if not perfect manner, what had become the reality at that point: the only apparent way to reach a new agreement, and thereby end the impasse, would be for employees to revote in favor of the LBFO." (ALJ's Decision, p. 29, Lines 34-37; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300,

335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 546, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97).

26. The ALJ's finding that a preponderance of the record evidence establishes that the parties reached a genuine impasse at the September 2nd session. (ALJ's Decision, p. 29, Lines 39-41; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

27. The ALJ's rejection of the General Counsel's allegation that the Company's refusal to continue bargaining on September 2nd was unlawful because ratification votes are an internal union matter and nonmandatory subject of bargaining and the ALJ's conclusion that the Employer did not improperly insist on another ratification vote "for essentially the same reasons" he relied on in holding that the Company did not prematurely declare impasse. (ALJ's Decision, p. 30, Lines 8-20; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

28. The ALJ's finding that the parties had already reached a bona fide impasse at the time May made his statements linking the impasse to another ratification vote. (ALJ's Decision, p. 30, Lines 14-16; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-

100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

29. The ALJ's finding that: "May's statements simply reflected what was patently true at that point: the only apparent way to reach a new collective-bargaining agreement- consistent with both the parties' practice and their proposals and express understanding regarding the necessity of the ratification vote- was for employees to revote in favor of the Company's LBFO." (ALJ's Decision, p. 30, Lines 16-20; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

30. The ALJ's finding that: "May did not insist to impasse on a ratification vote; an impasse already existed." (ALJ's Decision, p. 30, Lines 22-23; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

31. The ALJ's finding that: "Nor did May insist on a vote as a condition to ending the impasse and reaching an agreement; a vote was simply the only apparent way to reach a new contract at that time." (ALJ's Decision, p. 30, Lines 23-24; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

32. The ALJ's dismissal of the General Counsel's allegation that the Company's insistence on a re-vote as a condition of reaching an agreement and ending the impasse separately and independently violated Section 8(a)(5) of the Act. (ALJ's Decision, p. 30, Lines 22-27, Footnote 37; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

33. The ALJ's dismissal of the allegation that the September 6th lockout violated Section 8(a)(5) and (3) of the Act because it was in furtherance of the Company's unlawful bargaining positions regarding impasse and ratification which were not unlawful. (ALJ's Decision, p. 30, Lines 31-32, p. 31, Lines 5-8; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338,

342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105, G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

34. The ALJ's conclusion that the Company did not violate Section 8(a)(5), (3) and (1) of the Act as alleged in the consolidated complaint with respect to the General Counsel's allegations that: 1) the Company unlawfully refused to continue bargaining with the Union by prematurely declaring impasse and improperly conditioning an end to the impasse on the Union submitting its "last, best, final offer" to another vote; and 2) the Company unlawfully locked out all 80-82 unit employees in support of its unlawful bargaining position. (ALJ's Decision, p. 2, Lines 13-21, 25-29, p. 31, lines 22-23; Tr. p. 43-48, 51-56, 59-67, 70-73, 75-80, 87, 94-100, 102-109, 111-114, 116-118, 121-126, 128, 131-136, 139-140, 144-147, 149-167, 243, 247, 259-261, 270, 295-296, 299-300, 335-336, 338, 342-348, 350, 390, 401, 425-429, 450-454, 462, 464, 516, 548; G.C. Ex. 5, p. 1-5, 7-8, 35-43, 45-46, 49-60, 61-81, 83-85, 87, 89-91, 93, 95-97, 103-105; G.C. Ex. 10; Respondent's Exhibits 19, 24, 44, 113, 132).

35. The ALJ's finding that the Union's March 10, 2011 "counterproposal" on the 401(k) issue was essentially the opposite of the Company's proposal. (ALJ's Decision, p. 18, lines 37-46; Tr. 113-118; G.C. Ex. 5, p. 49-60).

36. The ALJ's finding that the Company moved "only slightly" on the 401(k) issue during the March 28th negotiation session. (ALJ's Decision, p. 18, lines 38-42; Tr. 59, 113-117, 125-126; G.C. Ex. 5, p. 59, 61).

37. The ALJ's finding that the July 28, 2011 negotiation session was only "relatively" productive. (ALJ's Decision p. 22, lines 8-9, Tr. p. 63-65, 70-71, 75, 140, 144-145, 401, 450-454; G.C. Ex. 5, p. 83-85, 87, 89-91, 93; G.C. Ex. 10, p. 9-10).

38. The ALJ's failure to find that the Union's District 7 Director Jim Robinson did not have a negotiating role during the September 2nd session. (ALJ's Decision, p. 23, lines 21-27, 29-33, 35-39, p. 24, lines 7-10, 16-20; Tr. p. 75, 146, 149-150, 259, 335-336, 338).

39. The ALJ's finding that the Union's October 24th counter-proposal was unsatisfactory or insignificant and his failure to find that the Union's counter-proposal represented progress. (ALJ's Decision, p. 25, lines 39-44, footnote 28; G.C. Ex. 5, p. 103-105; Tr. p. 71-72, 76, 83-84, 145-147, 149-152, 155-156, 159-166, 247, 270).

Respectfully submitted,

/s/ Robert A. Hicks
Robert A. Hicks
Richard J. Swanson

MACEY SWANSON AND ALLMAN

445 North Pennsylvania Street, Suite 401
Indianapolis, IN 46204-1800
Phone: (317) 637-2345
Fax: (317) 637-2369
E-mail: rhicks@maceylaw.com
rswanson@maceylaw.com

Attorneys for the Union

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served the foregoing Post-Hearing brief of the Union on the following via e-mail and first-class, United States mail, postage pre-paid, this 5th day of November, 2012:

Jason Kim
Howard Bernstein
Counsel to Charged Party
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, Illinois 60602-3801
jkim@ngelaw.com
hbernstein@ngelaw.com

Derek Johnson
Counsel to the General Counsel
National Labor Relations Board
575 N. Pennsylvania Street, Room 238
Indianapolis, IN 46204-1577
Derek.Johnson@nrlrb.gov

/s/ Robert A. Hicks
Robert A. Hicks

MACEY SWANSON AND ALLMAN
445 North Pennsylvania Street, Suite 401
Indianapolis, IN 46204-1800
(317) 637-2345
rhicks@maceylaw.com